

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 4:20-cv-05640-YGR

**[PROPOSED] ORDER DENYING
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

Re: Dkt. No. ____

On September 28, 2020, this Court heard oral argument on Plaintiff Epic Games, Inc.'s Motion for a Preliminary Injunction against Apple Inc. Having considered the parties' briefs, the record in this matter, and the arguments of counsel, the Court hereby DENIES Plaintiff's Motion for a Preliminary Injunction.

It is Epic's burden to establish (1) a likelihood of success on the merits, (2) that it is likely to suffer irreparable harm in the absence of injunctive relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Epic fails to meet its burden for this extraordinary remedy. *First*, Epic is not likely to succeed on the merits of its antitrust claims that Apple unlawfully maintains a monopoly or that Apple's requirements relating to its In-App Purchase feature constitute a tying arrangement in

1 violation of 15 U.S.C. §§ 1, 2. *Second*, Epic has not shown that it is likely to suffer irreparable
2 harm in the absence of preliminary relief because its current predicament is of its own making,
3 and “self-inflicted wounds are not irreparable injury.” *Al Otro Lado v. Wolf*, 952 F.3d 999, 1008
4 (9th Cir. 2020). *Third*, the balance of equities tips away from Epic and in favor of Apple,
5 particularly in light of the irreparable harm an injunction would impose on Apple and the security
6 and privacy of the App Store, the iPhone, and end users. *Fourth*, the public interest favors
7 denying the preliminary injunction because Epic should not be rewarded for harming others to
8 gain commercial leverage.

9 Accordingly, Epic’s motion for a preliminary injunction is **DENIED**.

10 **IT IS SO ORDERED.**

11 Dated: _____, 2020
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15 **YVONNE GONZALEZ ROGERS**
16 **UNITED STATES DISTRICT COURT JUDGE**
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